

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RONALD LAWRENCE MORTENSEN,
Petitioner,
v.
DWIGHT D. NEVEN, et al.,
Respondents.

Case No. 2:11-cv-00266-KJD-DJA
ORDER

This is a habeas corpus action under 28 U.S.C. § 2254. Petitioner has filed an unopposed motion for extension of time. ECF No. 175. The court finds that good cause exists to grant this motion. Petitioner also has filed a fourth amended petition. ECF No. 176. The court has reviewed the fourth amended petition under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Respondents will need to file a response to the fourth amended petition.

IT THEREFORE IS ORDERED that petitioner's unopposed motion for extension of time (ECF No. 175) is **GRANTED**.

IT FURTHER IS ORDERED that respondents must file a response to the fourth amended petition (ECF No. 176), including potentially by motion to dismiss, within 60 days of entry of this order and that petitioner may file a reply within 30 days of service of an answer. The response

1 and reply time to any motion filed by either party, including a motion filed in lieu of a pleading,
2 will be governed instead by Local Rule LR 7-2(b).

3 IT FURTHER IS ORDERED that any procedural defenses raised by respondents to the
4 petition must be raised together in a single consolidated motion to dismiss. In other words, the
5 court does not wish to address any procedural defenses raised herein either in serial fashion in
6 multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted
7 from such motion to dismiss will be subject to potential waiver. Respondents must not file a
8 response in this case that consolidates their procedural defenses, if any, with their response on the
9 merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking
10 merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they must
11 do so within the single motion to dismiss not in the answer; and (b) they must specifically direct
12 their argument to the standard for dismissal under § 2254(b)(2) set forth in Cassett v. Stewart, 406
13 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including exhaustion, may be
14 included with the merits in an answer. All procedural defenses, including exhaustion, instead
15 must be raised by motion to dismiss.

16 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents must
17 specifically cite to and address the applicable state court written decision and state court record
18 materials, if any, regarding each claim within the response as to that claim.

19 DATED: February 16, 2022

20 
21 KENT J. DAWSON
22 United States District Judge

23
24
25
26
27
28